

# **BACKGROUND PAPER FOR HEARING**

**December 7, 2005**

## **PROPOSAL FOR LICENSING INTERNATIONAL MARRIAGE BROKERS**

### **JOINT COMMITTEE ON BOARDS, COMMISSIONS, AND CONSUMER PROTECTION**

**Senator Liz Figueroa, Chair**

**SUBJECT:** SHOULD CALIFORNIA ESTABLISH A LICENSING PROGRAM FOR  
INTERNATIONAL MARRIAGE BROKERS?

**SUMMARY:** This hearing will consider the issues and facts regarding the need for the  
establishment of international marriage broker regulations in California as  
proposed by AB 634 (Lieber).

#### **Existing federal law, the Immigration and Nationality Act (INA):**

- 1) Requires an international matchmaking organization doing business in the United States to disseminate to foreign recruits such immigration information as deemed appropriate by the Immigration and Naturalization Service, in the recruit's native language; including the rights of battered spouses. Matchmaking organizations are subject to fines as high as \$20,000 for violations of the law (8 USC Section 1375).
- 2) Allows a foreign fiancé to enter the United States on a specified visa issued upon a petition filed by a U.S. citizen or lawful permanent resident. The couple must marry within three months of arrival. A U.S. citizen may also bring a foreign spouse into the country through a special visa for a spouse (8 USC Section 1101).
- 3) Allows a foreign spouse residing in the U. S. to self-petition for lawful permanent residency if the spouse entered the marriage in good faith but left the marriage as a result of battering or extreme cruelty (8 USC Section 1154).

## **BACKGROUND**

### ***What is an IMB?***

An international marriage broker (IMB), also known as “mail-order bride” business or “international matchmaking organization,” provides a service that matches people living in foreign countries who are interested in marrying a U.S. citizen, with a U.S. citizen who is interested in finding a mate. IMBs recruit (usually) women in foreign countries – primarily Asian countries and countries in the former Soviet Republic to serve as potential spouses. These women are then advertised on the Internet or in a catalog created by the IMB (thus the traditional name “mail order bride”). U.S. citizens, primarily men, peruse the listings and when they find a woman or women they are interested in meeting, contract with the IMB to provide them with the woman’s contact information and in some cases a meeting with the woman facilitated by the IMB.

Federal law defines “international matchmaking organization” as a corporation, partnership, business or other legal entity, that does business in the United States and that “for profit” offers to U. S. citizens or aliens that are U. S residents, dating, matrimonial, or social referral services to nonresident noncitizens, by:

1. An exchange of names, telephone numbers, addresses, or statistics;
2. Selection of photographs; or
3. A social environment provided by the organization in a country other than the United States.

The term IMB does not include dating or matchmaking services. Dating services are distinguished primarily by the fact (1) both parties pay an equal fee to the service; and (2) both participants are U.S. residents.

### ***How many IMBs are there in California?***

The Author’s office has estimated that there are about 70 such brokers operating in California. In 1999 the U.S. Citizenship and Immigration Services (USCIS) issued a report titled *International Matchmaking Organizations: A Report to Congress* (USCIS Report) which cites the Global Survival Network’s estimate that nationally, some 200 mail-order bride companies arrange between 2,000 and 5,000 marriages in the United States each year.

### ***What is a “recruit”?***

A “recruit” is the resident or citizen of a foreign county who, through the use of an IMB, advertises him or herself as available and interested in dating or marrying a U.S. citizen. While the foreign recruit is most often a woman seeking marriage and immigration into the United States, the USCIS Report indicates that a significant number are men.

Although both men and women can be recruits, the vast majority are women; likewise, the vast majority of U.S. clients of IMBs are men. Therefore when gender-neutral terms cannot be easily used, for the sake of clarity this Background Paper will assume that the foreign recruit is a woman and the U.S. client a man. Despite the use of these terms, the proposed legislation is gender-neutral.

### ***What is a “client”?***

The term “client” is generally used to describe the California resident or U. S. citizen in California who pays an IMB to introduce him or her to a foreign recruit. Although both men and women can be foreign recruits, the vast majority are women; likewise, the vast majority of U.S. clients of IMBs are men. For this reason, and for the sake of clarity, when gender-neutral terms cannot be used, it is generally assumed that the foreign recruit is a woman and the U.S. client a man. Nevertheless, the proposed legislation to license international marriage brokers is gender-neutral.

### ***What other states regulate IMBs?***

Hawaii, Texas and Washington have all recently enacted legislation to regulate international marriage brokers that are similar to the current proposal. The Texas law requires any IMB doing business in Texas to provide recruits outside of the U. S. with the criminal and marital history of any client residing in the United States. Hawaii and Washington require that, upon request, marriage brokers must provide the recruit with the criminal history record information and the marital history information of the client residing in the state. All three states require the criminal background check to be obtained from the state's criminal justice department.

The Washington law specifically exempts “traditional matchmaking organizations of a religious nature.” Texas also requires that the IMB provide certain information to the foreign recruit about his or her basic rights. Under Texas law, the IMB is subject to a penalty of up to \$20,000 for each violation.

### ***Federal regulation of IMBs***

The bulk of law regarding IMBs in the United States is contained in federal law. The federal Illegal Immigration Reform and Immigrant Responsibility Act of 1996 requires each international matchmaking organization doing business in the United States to give to each foreign recruit, in the recruit’s native language, information approved by the Immigration and Naturalization Service, about immigration and the rights of battered spouses. Fines as high as \$20,000 may be imposed for violations of the federal law. The federal law also defines specific terms which are largely mirrored by the current regulatory proposal in AB 634.

Separate from the international matchmaking law, a U.S. citizen or lawful permanent resident may petition for an immigrant visa on behalf of a fiancé, spouse or child. The petitioner controls when or if the petition is filed. However, because some petitioners may misuse their control of

the process to abuse their family members, the Violence Against Women Act passed by Congress in 1994, provides that an abuser's foreign spouse or child may self-petition to obtain lawful permanent residency without the abuser's assistance or knowledge.

In addition, legislation was introduced in 2004 in the House and Senate: H.R. 2949 (Larsen), S. 1455 (Cantwell). These bills, which ultimately were not enacted, would have required international matchmaking brokers that charge a fee to provide foreign recruits with information on domestic violence, as well as the criminal and marital history information on the client. Failure to comply would carry both civil and criminal penalties. The bills would also have required a U.S. citizen seeking a foreign fiancé visa to undergo a criminal background check, similar to the check that is already performed for the recruit entering the country. Under the bills, information on convictions and civil orders would be relayed to foreign recruits along with information on their legal rights should they find themselves in an abusive relationship.

### ***What does the current proposal do?***

The current proposal to license international marriage brokers, AB 634 (Lieber) as amended May 26, 2005, would regulate how international marriage brokers conduct business in California.

Specifically, the bill:

- 1) Requires the Department of Consumer Affairs (DCA) to promulgate regulations which require every international marriage broker (IMB) to be licensed by DCA in order to provide IMB services, as defined. Each license shall be renewed every two years, and DCA shall charge a fee sufficient to cover the cost of licensing and renewal.
- 2) Requires DCA to promulgate regulations that would disqualify for licensure, any IMB who has committed crimes of a violent or sexual nature, or crimes against children, thereby prohibiting an IMB from conducting business in this state or from contracting with clients.
- 3) Requires an IMB to provide a recruit with basic rights information, as defined, in the recruit's native language. The information must be easily accessible and highly visible. Prohibits an IMB from providing any further services to the recruit or client until the IMB has provided the recruit with the basic rights information.
- 4) Requires an IMB to obtain a recruit's permission prior to releasing any contact information about the recruit.
- 5) Requires DCA to conduct criminal background checks for IMB license applicants through the Department of Justice (DOJ) and the Federal Bureau of Investigation, and authorizes the DOJ to charge a fee for processing fingerprint information.
- 6) Establishes a 5-member group to draft the basic rights information. The group shall include: immigration experts, members of groups advocating on behalf of victims of domestic violence, and a representative of the federally designated domestic violence coalition. The members shall serve without compensation at the pleasure of their appointing authority, and shall be appointed as follows:

- a) One member appointed by the Department of Justice
  - b) Two members appointed by the Speaker of the Assembly
  - c) Two members appointed by the Senate.
- 7) Defines the following terms relating to the regulation of international marriage brokers:
- a) “Basic rights information” as information about human rights, immigration, emergency assistance resources, and victim rights regarding domestic violence. The information includes, but is not limited to:
    - (1) Emergency telephone numbers for law enforcement and fire department.
    - (2) The fiancée visa application process and marriage-based immigration status.
    - (3) Immigration relief available to immigrant victims of domestic violence, sexual assault, trafficking, and other crimes under federal law, as specified
    - (4) Legal rights of immigrant victims of abuse and other crimes in immigration, criminal justice and family law.
    - (5) The illegality of domestic violence, sexual assault, and child abuse.
    - (6) Information on the dynamics of domestic violence.
    - (7) Domestic violence and sexual assault services in California and the United States, as specified.
    - (8) The obligation of parents to provide child support for children.
  - b) “Client” as a resident of California who contracts with an international marriage broker to meet recruits.
  - c) “International marriage broker” as a person, corporation, partnership, sole proprietorship, or other legal entity that does business in California and, for a fee, offers to California residents dating, matrimonial, or social referral services involving recruits by doing any of the following in-state:
    - (1) Exchanging names, telephone numbers, addresses, or statistics.
    - (2) Selecting photographs.
    - (3) Providing a social environment for introducing clients to recruits in a country other than the United States.
  - d) “Recruit” as a person who is not a citizen or resident of the United States and who is recruited by an international marriage broker for the purpose of providing dating, matrimonial, or social referral services.

***Who is the source and what is the basis of the current proposal to license IMBs?***

The Author is the source of the current regulatory proposal. Unlike most sunrise proposals, the current proposal to regulate international marriage brokers is not brought forward by an occupational or professional group seeking regulation. Indeed, the Joint Committee's *Regulatory Request Questionnaire* submitted by the Author's offices states that there is no known occupational or professional association representing IMBs in California or in the United States.

Furthermore, the regulation is not sought by a consumer group or recipients of IMB services. Neither clients (California residents who contract with IMBs for matchmaking services) nor recruits (noncitizens recruited by IMBs as potential matches for clients) have either requested or opposed the proposed regulation. However, AB 634 is supported by the following:

California Alliance for Consumer Protection  
California National Organization for Women  
National Council of Jewish Women, Los Angeles section  
Organización en California de Líderes Campesinas, Inc.  
Sisters of the Holy Names of Jesus and Mary of the California Province  
California Commission on the Status of Women

The Author's office states that there is growing concern about the IMB industry throughout the United States, including in California. The Tahirih Justice Center (a non-profit organization in Virginia that provides pro bono legal services and public policy advocacy to immigrant and refugee women and girls fleeing violence) has documented nearly 50 cases nationwide in which foreign recruits find themselves victims of domestic violence, forced labor and even murder. The most prominent case, which received nationwide attention, was the murder of Anastasia King in Washington by a man who brought her to the U.S. after choosing her from an IMB's catalog. In California, a half-dozen cases have been documented over the past decade; many more are doubtlessly unreported, according to the Author.

***What is the nature and severity of the harm which makes the proposed licensing scheme necessary?***

The following summarizes the *Regulatory Request Questionnaire* argument regarding the need for the proposed regulation of international marriage brokers:

IMBs recruit women in foreign countries; primarily, Asian countries and countries in the former Soviet Republic to serve as potential spouses. These women are then advertised on the Internet or in a catalog created by the IMB. U.S. citizens, primarily men, peruse the catalog and when they find a woman or women they are interested in meeting, contract with the IMB for the woman's contact information and in some cases a meeting with the woman facilitated by the IMB.

Unfortunately, this matchmaking does not always end happily. Women recruits are extremely vulnerable to abuse at the hands of their new spouses. The use of IMBs has

increased dramatically in the U.S. in recent years, in part because of the expansive reach of the Internet. Most recruits come from countries with high rates of poverty. Coming to the U.S. as a foreign recruit is presented to these women as an attractive way to escape poverty, and build a new, more prosperous life in the United States. While some women realize those goals, in an increasing number of cases women find themselves in abusive relationships which are difficult to escape. The women are isolated in a foreign country with no resources, dependant on an abusive husband to maintain their legal immigration status, and without any support system to assist them in escaping from the violent relationship.

Experts contend that several factors contribute to the high rates of abuse among IMB brokered marriages. Primary among these is the nature of the IMB industry, which often intentionally markets itself to men seeking to dominate subservient women. The IMB industry's marketing approach often caters to those who tend to view foreign recruits as objects or possessions.

These techniques by the IMB industry are clearly intended to appeal to men with a certain view of the role of women in marriage. In doing so, the IMBs help contribute to dangerous perceptions about the women involved and unrealistic expectations by male consumers.

In addition to these inherent problems, the client and the foreign recruit have very unequal bargaining power; the husband can be very selective while the wife enters into the relationship very much in the dark. Once in the United States, the unequal balance of power between the two is further exacerbated because the foreign recruit is entirely dependant on her husband for her legal immigration status. Usually the foreign recruit seeks legal immigration status through a fiancée visa. Under the regulations governing the fiancée visa, the woman must marry her mate or return to her home country within 90 days. This gives her a very short time period after arrival in the U.S. to evaluate a prospective husband.

After the 90-day period, the foreign recruit must apply for lawful permanent residency (i.e., a "green card") in order to remain in the U.S. As a part of this process, the spouse must accompany the applicant to the interview, and attest by affidavit that he can support her financially so she will not become a public charge. Thus, the recruit is dependant upon her husband to retain her legal residency status. The husband can use this fact as a means of ensuring her compliance with his wishes, such as convincing her to not report abuse.

Once a green card is obtained, it is conditional for two years. At any point during that time, the husband can remove his support for her status and jeopardize her legal presence in the U.S. In an abusive relationship, this unequal power structure can be easily exploited.

Finally, as a new resident of the U.S., the foreign recruit is culturally and socially isolated. She is unlikely to be aware of her basic rights in the U.S., or the availability of social services such as domestic violence counseling and shelters. This isolation, combined with the potentially powerful tools for manipulation available to her husband, creates a situation ripe for emotional and/or physical abuse.

***What elements of a profession requiring licensure are reflected in the Regulatory Request Questionnaire?***

In response to the *Regulatory Request Questionnaire* concerning professional judgments made by practitioners, it is stated that IMBs are not called upon to make “professional” judgments. There is no particular expertise or training involved in the IMB industry. Furthermore, the Questionnaire indicates that IMBs do not require a high degree of skill or knowledge in order to avoid harm and that standards of competence are not applicable to the proposed regulation. The questionnaire additionally indicates that measurable indicators of competent practice among IMBs according to objective standards are not applicable to the proposed regulation.

With regard to whether the occupation requires possession of knowledges, skills and abilities that are both teachable and testable, the Questionnaire indicates that generally, there is no particular knowledge, skill or abilities that are applicable, and the proposed regulations do not require training or testing of those in the occupation. Licensing is not based upon a showing of requisite skill or training, but rather on the absence of a criminal record.

It would appear that many of the elements which typically call for professional licensure may be lacking in the current regulatory proposal. The factors noted may instead suggest the regulation of a business practice rather than a professional licensing scheme.

***Costs of the proposed regulatory scheme.***

The Questionnaire states that an independent cost analysis of the regulatory proposal is not available. Therefore the Author’s office has derived cost estimates by reviewing various regulatory programs within the Department of Consumer Affairs. Assuming that there are an estimated 70 IMBs subject to licensure, and that each IMB would license two employees, it is concluded that an estimated 140 applicants would be subject to licensure and biennial renewal.

The Questionnaire estimates that the regulatory costs will be approximately equivalent to DCA’s Board of Guide Dogs for the Blind. The Department’s FY 2002-03 Annual Survey, indicates that the Board issued 103 Guide Dog licenses in that period. According to the Department of Finance, the expenditures for the last three years for that program were as follows:

2003-04	2004-05	2005-06
\$ 115,000	\$ 152,000	\$ 153,000

Accordingly, the estimated annual cost of this program is roughly \$140,000 per year.

It appears likely that the estimate of 140 licensees per year may be a high projection. Since the provisions of the bill define an international marriage broker as a person, corporation, partnership, sole proprietorship, or other legal entity that does business in California, it would seem likely that most international marriage brokers would become licensed as a business and not under individual licenses. Therefore the estimate that each of the 70 IMBs in California



would license two employees appears to be optimistic. It would seem more likely that number of licensees would be closer to the actual number of IMBs in the state.

Based upon 70 licenses being issued and renewed on a biennial basis, licensing fees would have to be around \$2,000 per year (\$4,000 every two years) to support a \$140,000 annual budget.

### **Questions for the Joint Committee**

1. What is the level of support for state licensure of international marriage brokers in California? What support is there from the practitioners themselves who would be licensed by the proposed regulatory scheme?
2. How does the proposed regulation of international marriage brokers address the harms cited in the Sunrise Questionnaire?
3. Since there are a number of Federal laws which govern the practice of international marriage brokers, would the proposed regulatory scheme result in two layers of rules for IMBs to comply with? One Federal and one State?
4. Will the basic rights information developed by the 5-member group in the proposal be in conflict with the information approved by the Immigration and Naturalization Service as required by federal law?
5. Based upon the small number of anticipated licensees (approximately 70 international marriage brokers in the state) what will be the level of support from licensees for the fees which would be necessary to run an adequate licensing program?
6. The regulatory proposal contains no enforcement provisions. What do you anticipate would be the appropriate enforcement requirements for this new licensing program and what would be the source of funding for enforcement?
7. Many international marriage brokers are Internet based, posting information about foreign recruits and advertising to prospective clients in California almost exclusively through the Internet. How does the current proposal affect IMBs that are not located in California, but who contract with California residents as clients over the Internet?